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February 14, 2003

VIA CERTIFIED MAIL

Mr. Mike Ribordy
77 West Jackson Blvd., SR-6J
Chicago, Illinois 60604-3590

Ms. Sandra Bron
Illinois EPA/Bureau of Land
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

Re: In the Matter of Sauget Area 2 Superfund Site
Docket No. V-W-'02-C-716

Dear Mr. Ribordy and Ms. Bron:

Glidden, on behalf of the former U.S. Paint entity, has received the Unilateral Administrative Order ("UAO") dated September 30th, 2002. Glidden, on behalf of U.S. Paint, believes that U.S. EPA does not have sufficient cause to include Glidden or U.S. Paint in this UAO.

EPA's policy and guidance specify that parties can not be named as respondents to CERCLA 106 Orders without evidence of actual liability, as opposed to possible or potential liability. See *Guidance on CERCLA § 106(a) Unilateral Administrative Orders for Remedial Designs and Remedial Actions*, 20 ELR 35253, 35256 (Jan. 31, 1990)("Unilateral orders should be issued based upon adequate evidence of the PRP's liability. Evidence sufficient to support the liability of each PRP named as a respondent needs to be in EPA's possession."). See also, *Guidance on CERCLA Section 106 Judicial Action*, p. 6 (Feb. 24, 1989)("A Section 106 referral may be brought against some or all of the PRPs identified at a site. In determining which parties to name in a Section 106 judicial action, consideration should be given to the volume and nature of the waste contributed by each party, the involvement of parties such as prior owners, the financial position of each party, and the strength of liability evidence against each party.")

In addition to legal constraints, there are strong policy reasons for naming as respondents to a CERCLA 106 order only those parties for which liability is not in doubt. Section 106 of CERCLA is the most powerful weapon in EPA's enforcement arsenal. Improperly used, the section is truly draconian, given the severe limitations on judicial review, which preclude a PRP from obtaining a prompt determination as to whether liability under CERCLA 107 can be established or negated. Hence, a party, though without liability, would have little choice but to comply with an order in which it has been improperly named because its exposure to litigation costs, civil penalties

and punitive damages is colossal. Although courts have found that Section 106 facially does not deny a citizen due process, EPA surely recognizes that it must be particularly circumspect in naming parties to a unilateral administrative order.

Glidden, on behalf of U.S. Paint, submits that the evidentiary materials linking it to the Sauget Area 2 site are such as to compel the conclusion that neither Glidden nor U.S. Paint has any liability under CERCLA regarding the Site, particularly as it regards the groundwater problem which EPA seeks to address. Glidden, on behalf of U.S. Paint, was unable to locate any documents linking it to either Sauget Area 2, or to the various transporters during the relevant time period. The driver statement on which Glidden, on behalf of U.S. Paint, believes U.S. EPA has based its assertion of liability is based on vague recollection and sweeping generalization, made in an attempt to provide EPA with the substantiation it needs to justify identifying a party as a PRP. Therefore, Glidden and U.S. Paint cannot lawfully be part of the CERCLA 106 order for the groundwater problem at Sauget Area 2.

Furthermore, as you know, Solutia has agreed to solely implement the remedy as directed by the UAO. During the course of several extensions in the effective date of this UAO, Glidden, on behalf of U.S. Paint, has worked with other parties to agree on compliance with the UAO. To this end, Glidden, on behalf of U.S. Paint, has attempted to negotiate with Solutia in good faith to achieve a mutually satisfactory division of costs for the work to be performed under the UAO. *See* Exhibit A, letters to Solutia. These efforts have, to date, been unsuccessful. *See* Exhibit B, Solutia's responses. Solutia, the major PRP, has thus foreclosed the possibility of compliance with the UAO to date. In addition, by ordering Glidden, on behalf of U.S. Paint, to participate in Solutia's cleanup would require Glidden, on behalf of U.S. Paint, to accept a binding allocation process. This would necessarily force Glidden to waive its statutory right to contribution as provided under § 113 of CERCLA. We believe EPA lacks authority to compel a PRP to forego a statutory right. Therefore the UAO ordering Glidden, on behalf of U.S. Paint, to participate in Solutia's allocation is without sufficient cause and unconstitutional.

However, Glidden, on behalf of U.S. Paint, remains interested in complying with the UAO and, to this end, is interested in directly discussing such compliance with U.S. EPA. We will contact U.S. EPA to request a date and time to do so.

Glidden, on behalf of U.S. Paint, certifies that is has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability at the OU site and OU source areas since the time of its notification of potential liability by U.S. EPA or the State.

Very truly yours,

SEYFARTH SHAW

Lorena S. Neal

cc: Thomas Lupo, Esq.
Mr. Robert Kovalak

EXHIBIT A

HUNTON& WILLIAMS

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DAVID O. LEDBETTER
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FILE NO: 23390.000364

December 19, 2002

SETTLEMENT COMMUNICATION

VIA FACSIMILE AND U.S. MAIL

Linda W. Tape, Esquire
Attorney
Husch & Eppenberger
190 Carondelet Plaza
Suite 600
St. Louis, MO 63105

Re: Sauget Groundwater UAO Settlement

Dear Linda:

On behalf of American Zinc Company (also known as or predecessor to American Zinc, Lead and Smelting Co., Gold Fields America Corp, Blue Tee Corp.), Browning Ferris Industries of North America (including Trashmen, C&E Hauling and Hilltop Hauling), Cargill Inc., Cerro Copper Products Company, Chemical Waste Management Inc. (including Onyx Environmental Services), Dennis Chemical Co., Inc., Dow Chemical, Ethyl Corporation and Ethyl Petroleum Additives, Inc. (formerly known as Edwin Cooper Corporation), ExxonMobil Corp. (formerly known as Mobil), The Glidden Co. (formerly known as U.S. Paint), Kerr-McGee (formerly known as T.J. Moss and Moss American), Norfolk Southern Corporation, Pillsbury Company, and Rogers Cartage (the "Settlement Parties") this letter responds to your letter of November 1, 2002, and presents a settlement counterproposal. This letter is sent solely for purposes of settlement. No admission of any issue of fact or law is intended, and none should be inferred.

The Settlement Parties have carefully considered Solutia's proposal and supporting explanation and have concluded that it is not acceptable because, while it constitutes a meaningful step in the right direction, it fails to reflect an objective assessment of the causes of the conditions that triggered EPA's issuance of the subject UAO, and because it proposes an unnecessarily complex process in which they do not wish to participate. In particular, the Settlement Parties believe that all, or virtually all, of the ground water contamination found to date in the area of the asserted threat to the environment has its origins at Site R and Solutia's

Krummrich Plant, sources for which the Settlement Parties have no potential responsibility. In addition, EPA and Solutia have acknowledged that the required interim remedial action may effectively serve to satisfy most, if not all, of Solutia's RCRA ground water-related corrective action and closure obligations concerning the Krummrich Plant. Furthermore, some of the Settlement Parties have had inordinate difficulty in working with Solutia to supplant an interim allocation with a final allocation concerning costs of conducting the Area 2 RI/FS. Thus, the Settlement Parties do not wish to enter into an interim allocation agreement with Solutia concerning the costs Solutia may incur in meeting all of its obligations under the UAO. Finally, the Settlement Parties wish to avoid unnecessary transaction costs that may be associated with a protracted final settlement process or post-settlement process.

In light of the above, the Settlement Parties propose the following key settlement terms:

1. Solutia would commit to comply fully with all requirements of the UAO relating to full and timely performance of all "Work" as defined in the UAO and reimbursement of all oversight costs, and both Solutia and Pharmacia would release and fully indemnify the Settlement Parties, and hold the Settlement Parties harmless from, all further liabilities associated with all claims or demands associated therewith.

2. The Settlement Parties would promptly make a single payment of $678,655 into an escrow account from which only costs of UAO "Work" and oversight reimbursement may be paid by Solutia; provided, however, that not more than 10% of such amount may be withdrawn from the account by Solutia for such purposes in any calendar year.

3. The Settlement Parties would assign to Solutia their rights to seek contribution concerning the $678,655 from any other potentially responsible parties; provided, however, that such assignment would be void, *ab initio*, if Solutia or Pharmacia materially default on their obligations under term 1.

4. No party would attempt to raise or introduce, in any subsequent negotiation or proceeding concerning either Sauget Area 1 or Sauget Area 2, any payment or proportion of payment associated with this settlement.

5. The settlement would be conditioned on EPA's agreement to extend the AOC response/"sufficient cause" letter deadline as to the Settlement Parties until such time as EPA has certified that all requirements of the AOC have been met by Solutia, or until EPA determines that Solutia is not capable of complying with the AOC.

The Settlement Parties wish to emphasize that they do not believe their collective potential responsibility in this matter rises nearly to the level of expense reflected in the above proposal. Their proposal has been made in the interest of expeditiously and efficiently avoiding wasteful transaction costs and affirming their good faith desire to cooperate in this matter with both the EPA and Solutia.

As you are aware, EPA has extended the UAO response deadline for the Settlement Parties to January 15, 2003. Thus, we request that Solutia respond to this proposal as soon as possible.

Yours truly,

David O. Ledbetter

David O. Ledbetter
Counsel for Ethyl Corporation

cc: Representatives of Settlement Parties (by e-mail)

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February 5, 2003

SETTLEMENT COMMUNICATION
BY FACSIMILE AND FIRST CLASS MAIL

Linda W. Tape, Esquire
Attorney
Husch & Eppenberger
190 Carondelet Plaza
Suite 600
St. Louis, MO 63105

Dear Linda:

On behalf of American Zinc Company (also known as or predecessor to American Zinc, Lead and Smelting Company, Gold Fields America Corp. and Blue Tee Corp.), Browning Ferris Industries of North America (including Trashmen, C&E Hauling and Hilltop Hauling), Cargill Inc., Cerro Copper Products Company, Chemical Waste Management Inc. (including Onyx Environmental Services), Dennis Chemical Co., Inc., Ethyl Corporation and Ethyl Petroleum Additives, Inc. (formerly known as Edwin Cooper Corporation), ExxonMobil Corp. (formerly known as Mobil), The Glidden Co. (formerly known as U.S. Paint), Pillsbury Company, Rogers Cartage, and Cyprus Amax Minerals Company. (the "Settlement Parties"), I write in response to your letter of January 8, 2003. EPA has advised us that they have granted our request of January 10, 2003, for an extension of time, to and including February 14, 2003, for submissions of Sauget groundwater unilateral administrative order ("UAO") "intent to comply" responses. We hope to work with you and Solutia to make good use of the remaining settlement opportunity.

A limited response to some of the points raised in your letter may prove helpful. Your letter incorrectly assumed that the Settlement Parties have not taken into consideration the fact that the selected remedy will "capture" groundwater from areas other than Solutia's Krummrich plant that are upgradient of that portion of designated Sauget Area 2 known as Site R. For purposes of settlement negotiation, and without any admissions of facts or of liability concerning the matters addressed in the UAO, the Settlement Parties have considered and are willing to acknowledge Solutia's position that some contamination originating in such areas may be relevant to these negotiations, but discussion and settlement based on consideration of that position cannot logically or equitably ignore that the concentrations and related quantities of contaminants to be addressed by the remedial program should be the central focus of inquiry.

Our review of data developed during Solutia's conduct of the focused feasibility study ("FFS") for groundwater reveals that concentrations of volatile organic compounds ("VOCs") and semi-volatile organic compounds ("SVOCs") in the shallow and middle groundwater units upgradient of Site R are in the 100 to 1,000 ppb range, while concentrations of VOCs and SVOCs underneath Site R and immediately downgradient of Site R are 10 times to 100 times higher. The only reasonable conclusion to be drawn from the data is that Site R accounts for 90% to 99% of the VOCs and SVOCs targeted by the selected remedy. Furthermore, the Krummrich Plant is not only the largest area by far in the remedy's anticipated capture zone, but also its raw materials and products closely correlate with identified groundwater contaminants of concern and it has been the subject of documented spills and releases.

Solutia's apparent focus solely on "capture zone" geography or hydrology (the degree to which either may be guiding Solutia's analysis is not clear) as a basis for its negotiation position in this matter ignores entirely the alleged harm that gave rise to EPA's selection of the remedy or to its issuance of the UAO. Solutia's position is inconsistent with any reasonable approach to liability allocation. If, solely for the sake of negotiation and discussion, the Settlement Parties accept Solutia's view that the Settlement Parties are implicated to some extent in contaminated groundwater that will be captured by the remedy, they cannot be expected to ignore the obvious fact that the overwhelming majority of the contamination that has driven the remedy and will be recovered by the remedy is the sole responsibility of Solutia. At the same time, the Settlement Parties should not be expected to spend time pointlessly speculating on or considering the irrelevant question of what EPA may or may not have determined or will determine concerning groundwater associated with other portions of Area 1 and Area 2.

For these and the other reasons set forth in my letter of December 19, 2002, the Settling Parties believe that their prior offer of settlement reflected a funding commitment to the subject response activities that substantially exceeded any potential equitable responsibility or liability to which they may be exposed. For those same reasons, the Settling Parties cannot accept the approaches to settlement and interim or final cost allocation proposed in your letter. We note that, though there has been some repackaging, your letter does not reflect any material alteration from Solutia's November 1, 2002, position concerning the process and substance of settlement proposed to the Settling Parties. Furthermore, the current Settling Parties do not find in your letter, and cannot imagine, any reason why Solutia has decided that it should pursue final settlements with Dow, Kerr-McGee and Norfolk & Southern based apparently upon a final indemnified "cash out," while absolutely foreclosing such an arrangement with the other companies involved, all of which appropriately view their potential involvement in the present matter as, at most, de minimis.

While your letter leaves only a measure of hope that any agreement with Solutia is possible, the Settling Parties propose key terms of the following alternative settlement options.

Option 1: The Settling Parties, which now include Cyprus Amax and which no longer include Dow, Kerr-McGee or Norfolk and Southern, would pay to Solutia a final settlement of $755,705, to be used solely for implementing work required by the UAO. Solutia and Pharmacia would broadly release the Settling Parties from all claims associated with response activities required by the UAO and other costs of complying with the UAO, indemnify and defend the Settling Parties against any such claims asserted by any other party with whom Solutia or Pharmacia reaches a settlement, and take such actions as may be necessary to assist the Settling Parties in securing from EPA contribution protection concerning such claims. The settlement would be conditioned on EPA's agreement to extend such contribution protection in exchange for the payment to Solutia.

Option 2: The Settling Parties would pay, as incurred, 2.85% of the costs of work required by the UAO and of oversight costs pursuant to the UAO, subject to an absolute cap of $855,000. Other key terms and conditions are as in Option 1.

The Settling Parties believe strongly that their limited involvement in this matter and the clear nature of the relationship between the requirements of the UAO and Site R and the Krummrich Plant support the need for and appropriateness of a final agreement concerning the UAO, rather than an interim agreement to be followed by later alternative dispute resolution.

We hope to hear from you soon concerning our proposed settlement options; and we would welcome an opportunity to meet with you by telephone or in St. Louis if you think it would be helpful.

Sincerely,

David O. Ledbetter

cc: Representatives of Settlement Parties (by e-mail)

EXHIBIT B

Husch & Eppenberger, LLC
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January 8, 2003

Confidential Settlement Communications

Mr. David O. Ledbetter
Hunton & Williams
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, VA 23219-4074

Re: **Sauget Groundwater UAO**

Dear David:

This letter is Solutia's response to the counter proposal from the various parties listed in your letter dated December 19, 2002. As you might imagine, receipt of the counter proposal directly before the holidays has made it difficult to put a response together before this first full week of the new year.

There are a few statements in your letter that we would like to address before actually responding to your proposal. In your letter you acknowledge that the groundwater collection system (including the installation of the wall) will capture groundwater from the Solutia W.G. Krummrich ("WGK") Plant. Yet your group appears to assume that groundwater down gradient of WGK or adjacent to WGK is not being captured by the wall. This assumption is inconsistent with what is known about the groundwater migration in Sauget.

In addition, your letter asserts that because the groundwater collection system will address Solutia RCRA issues and Site R issues, then no one else is liable under Superfund for groundwater contamination migrating to the river under Site R. This just is not so. We have given to all the parties who attended the Solutia meeting, as well as others who have asked, a diagram setting out the groundwater capture zone. There is an abundance of evidence that the groundwater in Sauget moves rather rapidly toward the river. Up gradient of Site R are located sites which have RCRA or Superfund concerns where a number of parties (including those joining in your letter) are liable including Site S, Site O, Clayton Chemical, Cerro Copper, Site I, Site G, Site H etc. Solutia is rather amazed that the PRPs do not grasp how they could be liable, and how the groundwater collection system will help all liable parties for these upgradient sites. If each site were dealt with separately by EPA, the liable parties can be assured that they would be required to collect leachate, and also pump and treat groundwater at each individual site. With the installation of the containment system, the likelihood that the Agency will require

groundwater and leachate control at each individual site is greatly reduced thereby saving all liable parties on individual site expenses.

Because of the above, Solutia must reject much of the offer set forth in your December 19th letter. Solutia is willing to offer a counter proposal to some of the parties listed in your letter. Based on what we have found to date, evidence of liability for groundwater contamination caused by the following parties as to that groundwater being captured by the wall is not conclusive.

Dow
Kerr McGee
Norfolk & Southern

Solutia proposes as to the above parties the following:

1. Each party above would join in the UAO work in a buyout situation for $20,000 per party.
2. Solutia will indemnify each party as to the UAO work done (construction of the wall, well placement etc.).
3. A re-opener must be included in the event additional information comes to light that the settling parties have contributed to contamination that is contributing to the groundwater contamination being captured by the containment system.
4. Parties would be able to send a letter to EPA stating that they are participating in the UAO remedy thereby avoiding the accumulation of stipulated penalties.
5. The settling parties would assign to Solutia their rights to seek contribution concerning their $20,000 from any other potentially responsible parties
6. No party would attempt to raise or introduce, in any subsequent negotiation or proceeding concerning either Sauget Area 1 or Sauget Area 2 any payment or proportion of payment associated with this settlement.

As to the other parties to your letter, the settlement proposal is totally unacceptable because there is direct evidence that each of the remaining parties disposed of, or arranged for the disposal of, hazardous substances in a site up gradient of Site R (or owned or operated such a site) which site is within the groundwater capture zone. Because of this evidence, Solutia believes that the total sum offered is too low. In addition, Solutia will not indemnify parties who have clear evidence of their disposal activity in Sauget Area 2. Solutia will only consider settlement offers that offer to pay subject to re-allocation via alternative dispute resolution as set out in my November 1, 2002 letter. As a counter proposal, Solutia would be willing to settle with your group (excluding Dow, Kerr McGee and Norfolk and Southern) by your group paying 30% of the costs of installation of the groundwater extraction system. If re-allocation is not complete by the time the system is installed, your group would pay 30% of the operating cost until reallocation is complete.

Husch & Eppenberger, LLC

Solutia will seriously consider any reasonable settlement offers it receives from your group of parties. If any parties in your group would like to contact me individually, please have them do so.

Sincerely yours,

Linda W. Tape

Linda Tape

LWT/da

cc: Mr. Brent Gilhousen

::ODMA\PCDOCS\ST_LOUIS\1348342\1

From: "Ledbetter, David" <dledbetter@hunton.com>
To: "'Tape, Linda'" <linda.tape@Husch.com>
Date: 2/10/03 3:04PM
Subject: RE: Your letter of2/5/03

Linda,

As discussed in our call of a few minutes ago, this corrects an apparent misconception and confirms that the indemnity described in our group's proposed Option 1 is not a general indemnification. It would be limited to protection only against further claims of other PRPs (such as Dow) with which Solutia has settled or may settle. Furthermore, it is limited to the matters addressed in the proposal.

Best wishes.

David

-----Original Message-----
From: Tape, Linda [mailto:linda.tape@Husch.com]
Sent: Monday, February 10, 2003 3:18 PM
To: David Ledbetter (E-mail)
Cc: Brent Gilhousen (E-mail)
Subject: Your letter of2/5/03

David,

We wanted to get back to you with an initial response on your letter of 2/5/03. As was clearly set out in my January 7th letter to you, Solutia can not and will not indemnify any named party to the UAO when there is evidence of a party's liability for the area within the groundwater capture zone in Area 2. The offer in your letter continues to make indemnification a part of that offer. Therefore the offer reflected in your 2/5/03 letter can not be accepted. I will document this rejection of your group's offer in a letter to you within the next few days.

We are continuing to consider whether Solutia has anything further it can offer that could potentially result in a settlement with the parties named in your letter. If Solutia has a counter offer to submit to your group, that offer will be set forth in the next few days in the above referenced letter.

Linda

Linda W. Tape
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